NO. 84695

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI,

Respondent,

v.

NICKLOUS D. CHURCHILL,

Appellant.

APPEAL FROM THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI
THIRTEENTH JUDICIAL CIRCUIT, DIVISION II
THE HONORABLE FRANK CONLEY, JUDGE

RESPONDENT'S SUBSTITUTE STATEMENT, BRIEF AND ARGUMENT

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JURISDICTIONAL STATEMENT

This appeal is from a conviction for statutory sodomy, §566.062, RSMo 2000, obtained in the Circuit Court of Boone County, and for which appellant was sentenced to twenty years in the custody of the Missouri Department of Corrections. Jurisdiction in this case is proper because this Court granted transfer in this case after opinion by the Missouri Court of Appeals, Western District, pursuant to Article V, §10, Missouri Constitution (as amended 1976).

STATEMENT OF FACTS

Appellant, Nicklous D. Churchill, was charged by substitute information with one count of statutory sodomy, §566.062, RSMo 2000, and one count of victim tampering, §575.270.2, RSMo 2000 (L.F. 14). Appellant, represented by counsel, was brought to trial before the Circuit Court of Boone County, the Honorable Frank Conley presiding, on March 1, 2001 (Tr. 53).

Appellant does not contest the sufficiency of the evidence to support his convictions. Viewed in the light most favorable to the verdict, the evidence adduced at trial is as follows.

Alexis Tolch, the victim, was a kindergartener at Rock Bridge Elementary in Columbia (Tr. 170). Jeanne Tolch, Alexis' mother, met appellant near the end of February, 2000, in a pager store in Columbia (Tr. 200). After a short romantic interlude, appellant moved in with Jeanne and Alexis about March 9 (Tr. 200-01). Appellant remained in the house for approximately ten days, after which Jeanne kicked him out after she found out that he was dating at least one other woman (Tr. 203).[1]

On March 29, after appellant had moved out, Jeanne and Alexis were playing a game and Alexis asked if appellant was coming back (Tr. 206). When Jeanne said no, Alexis

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[1]The dates are uncertain as to when appellant actually moved in and out. The range of dates given is between March 9 to March 29, 2000 (Tr. 201). The time appellant was there was only ten days of that range (Tr. 201).

stated "Mommy, I'm glad because [appellant] touched me in my crotch. He hurt me, mom" (Tr. 207). Alexis further stated that appellant locked her in the bathroom, took her panties off, and inserted his fingers into her crotch (Tr. 173, 207).[2] Alexis said that it hurt really bad (Tr. 208).

Following this conversation, Jeanne took the victim to the Children's Advocacy Center in Columbia on April 11, 2000 (Tr. 179). At that time, Detective Michael Stubbs of the Boone County Sheriff's Department interviewed Alexis (Tr. 180). At that time, Alexis stated that she and appellant did not get along well because appellant "touched [her] crotch" in the bathroom of Alexis' home (Tr. 185, 186). Alexis stated that it was a "bad touch" (Tr. 186). Alexis further told the detective that "[appellant] put his fingers inside my crotch" (Tr. 187). Appellant did this while locked in the bathroom with the victim and while the victim's mother was sleeping (Tr. 187).

On April 12, 2000, Dr. Hana Solomon, a pediatrician, examined Alexis (Tr. 253). During the examination, Alexis told Dr. Solomon that "[appellant] hurt me in my crotch." It hurted. He locked me in my room" (Tr. 256). Alexis further stated that "[appellant] touched me with his finger under my pajamas, inside my body, a lot of times. It was an ouchy. And he didn't care" (Tr. 258). Dr. Solomon found that the victim's medical examination was

[2]"Crotch" and "gina" were the words that Alexis used to describe her vagina (Tr. 172, 207).

normal (Tr. 265). The entire examination, including demeanor, the interview, and the physical examination, was consistent with sexual abuse (Tr. 267).

Appellant testified in his own defense. His defense was that he did not sodomize Alexis (Tr. 310). Appellant testified that he had at least three other ongoing sexual relationships at the time he was involved with the victim's mother (Tr. 287, 291), and argued to the jury that he had no need to go after the victim because he had three adult women to fulfill his sexual desires at that time (Tr. 352-53). After the instructions of the court and the arguments of counsel, the jury acquitted appellant of the victim tampering charge and convicted appellant of the statutory sodomy charge (Tr. 362-63). The trial court sentenced appellant to twenty years in the custody of the Missouri Department of Corrections (Tr. 368). The Missouri Court of Appeals, Western District, affirmed appellant's conviction and sentence on June 4, 2002, in and unpublished order and memorandum opinion. State v. Churchill, No. WD59950 (Mo.App., W.D., June 4, 2002). This Court granted appellant's motion for transfer on August 27, 2002.

ARGUMENT

I.

The trial court did not abuse its discretion in denying appellant a mistrial after an expert witness testified that the victim had had a real experience because appellant failed to show that extraordinary circumstances requiring a mistrial occurred in that the statement was brief and unrepeated, the State did not emphasize or magnify the statement, appellant did not request any relief other than a mistrial, and any prejudice to appellant was slight.

Relevant facts

Appellant claims that the trial court abused its discretion by not granting a mistrial after Dr. Hana Solomon testified that "this event that [Alexis] was telling me was real and that a significant event had occurred to her" (Tr. 265; App. Sub. Br. 24). Appellant did not seek any relief other than a mistrial. The full statement that appellant complains of is as follows:

> Q. [prosecutor] So you took into account the history, the developmental abilities to recollect, discussing information beyond developmental age, and you mentioned demeanor. What part of demeanor was significant?
>
> A. [Dr. Solomon] It was very concerning that initially she was outgoing, comfortable, verbal. And then when she started discussing the details of the event she was telling me about, her entire affect changed, became soft-

spoken as I mentioned. And that told me a significant, that this event that she was telling me was real and that a significant event had happened to her.

(Tr. 264-65). At this point, appellant's trial counsel objected and the following conversation was held at the bench.

[Trial Counsel] Judge, now she's given an opinion to say in her opinion that this was real. She's totally intruding on the province of the jury. The court has admonished the state not to elicit such a response. I'm moving for a mistrial.

THE COURT: The objection will be overruled. Let's proceed.

(Tr. 265). Appellant's counsel thus requested one avenue of relief, a mistrial, and the trial court declined to grant a mistrial. The question presented in this case thus is whether a mistrial was mandated by law. A mistrial is not required when lesser relief would have cured any prejudice to the defendant or when the defendant was not prejudiced by the challenged testimony or event.

Issue presented in this case

Dr. Solomon testified that "that this event that she was telling me was real" (Tr. 265). Respondent concedes that this statement was not proper. The law is clear that an expert witness may not comment on the credibility of another witness. State v. Silvey, 894 S.W.2d 662, 671 (Mo. banc 1995); State v. Taylor, 663 S.W.2d 235, 239 (Mo. banc 1984). However, the question in this case is not whether this evidence was properly admitted. Appellant's sole request for relief was for mistrial, and he did not request any other lesser

relief (Tr. 265). In the absence of a motion to disregard or a motion to strike, this evidence was still before the jury after the motion for mistrial was denied. *See* State v. Archuleta, 955 S.W.2d 12, 16 (Mo.App., W.D. 1996). The question in this case is thus whether a mistrial was mandated.

Legal standard for mistrial

The law is well-settled that "[m]istrial is a drastic remedy reserved for the most extraordinary circumstances, and the decision whether to grant a mistrial is left to the sound discretion of the trial court." State v. Brown, 998 S.W.2d 531 (Mo. banc 1999), cert. denied 528 U.S. 979 (1999). This Court has also stated that "[a]ppellate courts are loathe to reverse judgments for failure to declare a mistrial unless they are convinced that the trial court abused its discretion as a matter of law in refusing to do so." State v. Crawford, 619 S.W.2d 735, 740 (Mo. banc 1981). A mistrial should only be granted when the prejudice to the defendant cannot be removed in any other way. State v. Williams, 922 S.W.2d 845, 851 (Mo.App., W.D. 1996). Further, "[the] failure on the part of defendant to present the trial court with 'a choice of some form of corrective relief short of a mistrial, dulls any inclination on the part of this court to label the trial court with an abuse of discretion for not declaring a mistrial.'" State v. Smith, 934 S.W.2d 318, 321 (Mo.App., W.D. 1996), *quoting* State v. Tygart, 531 S.W.2d 47, 50 (Mo. App., K.C.D. 1975). In this case, appellant did not ask the trial court for a motion to disregard, or any other form of curative instruction, short of the extraordinary remedy of mistrial.

Why a mistrial is not mandated in this case

A mistrial is not required in cases where the challenged statements do not prejudice the defendant because the statements are brief and non-responsive. This Court has held, in the context of allegedly prejudicial statements as a basis for mistrials, that "[u]nsolicited statements that are brief and limited in substance do not amount to reversible error in the absence of evidence that the prosecutor intentionally tried to inject unfair prejudice into the trial." State v. Johnston, 957 S.W.2d 734, 749 (Mo. banc 1997) *cert. denied* 522 U.S. 1150 (1998), *citing* State v. Kalagian, 833 S.W.2d 431, 435 (Mo.App., E.D. 1992) *and* State v. Masterson, 733 S.W.2d 40, 42 (Mo.App., S.D. 1987). In Johnston, a capital murder case, an emergency medical technician volunteered in the guilt phase of trial that the emergency call involving the victims was "the most brutal beating [he had] ever seen." Johnston, 957 S.W.2d at 749. This Court determined that this remark did not mandate a mistrial because the prosecution did not intentionally try to inject this statement into the trial. Id.

Missouri courts have used a similar test to determine whether a mistrial is necessary when witnesses volunteer evidence of other crimes. State v. Mahoney, 70 S.W.3d 601, 606-07 (Mo.App., S.D. 2002); State v. Costa, 11 S.W.3d 670, 677 (Mo.App., W.D. 1999); State v. Scott, 996 S.W.2d 745 (Mo.App., E.D. 1999). The courts look at the following five factors to determine prejudice.

> (1) whether the statement was, in fact, voluntary and unresponsive to the prosecutor's questioning or whether the prosecutor deliberately attempted to elicit the comments; (2) whether the statement was singular and isolated, and

> whether it was emphasized or magnified by the prosecution; (3) whether the comments were vague and indefinite, or whether they made specific reference to crimes committed by the accused; (4) whether the court promptly sustained defense counsel's objection to the statement and instructed the jury to disregard the volunteered statement; and (5) whether in view of the other evidence presented and the strength of the State's case, it appeared that the comment played a decisive role in the determination of guilt.

Mahoney, 70 S.W.3d at 607, *quoting* State v. Witte, 37 S.W.3d 378, 383 (Mo.App. S.D. 2001). Adapting these factors to the case at hand leads to the following test for prejudice in this case:

1. Whether the statement was truly volunteered, or whether the prosecution sought to elicit the comment;
2. Whether the statement was singular or isolated, or whether it was emphasized and magnified by the prosecution;
3. The inflammatory nature of the statement;
4. Whether counsel objected to the statement and requested a motion to disregard;
5. Whether the statement, viewed in light of the State's case, played a decisive role in the jury's verdict.

These factors are substantially similar to the standard enunciated by this Court in Johnston. The first and second factors looks at the prosecution's motive, the fourth factor looks at

the relief requested in the trial court, and the second, third, and fifth factors look at the nature of the statement itself. Examination of the challenged statement in this case under these factors shows that the statement did not rise to the level of a mistrial.

1. The prosecution did not seek to inject this issue

Similarly, in this case, a mistrial is not mandated because the prosecution did not seek to inject this issue into the trial. The prosecutor merely asked, after discussing the victim's medical history, "[w]hat part of the victim's demeanor was significant?" (Tr. 265). The prosecutor was not asking for an opinion about the veracity of the victim. The prosecutor asked which behavioral characteristics of the victim were significant. The answer to this question was non-responsive. The first factor thus is in the State's favor.

2. The statement was singular and isolated

The prosecutor made no further mention of the comment during direct examination but took this line of questioning to a legally proper conclusion: Dr. Solomon testified that "the entire examination was consistent with sexual abuse" (Tr. 267). The prosecutor also made no specific or implied mention of this comment in closing argument. The one non-responsive phrase came in the middle of seventeen pages of testimony on direct examination leading to a permissible conclusion: that the entire examination was consistent with sexual abuse. As this statement was brief, unrepeated, and not emphasized, the second factor weighs heavily in the State's favor as well.

3. Petitioner did not request any relief other than a mistrial

Petitioner in this case requested only one form of relief: a mistrial. Missouri courts have not favored defendants when thy do not ask for a motion to strike or decline the trial court's offer to strike. Mahoney, 70 S.W.3d at 607; Witte, 37 S.W.3d at 384; State v. Immekus, 28 S.W.3d 421, 431 (Mo.App., S.D. 2000); State v. Smith, 934 S.W.2d 318, 321 (Mo.App., W.D. 1996); State v. Walls, 911 S.W.2d 645, 648 (Mo.App., S.D. 1995).

Smith is instructive on this point. In Smith, as in the case at bar, the defendant asked for a mistrial and nothing more. After noting that the situation was "complex" because of the defendant's failure to request a curative instruction, the Court of Appeals then made the following observation.

> The Supreme Court and the courts of appeal have repeatedly held that the "declaration of a mistrial is a drastic remedy to be employed only in the most extraordinary of circumstances. . . . The fact that the defendant sought no relief other than a mistrial cannot aid him." State v. Gilmore, 681 S.W.2d 934, 943 (Mo. banc 1984). Accord, State v. Thurlo, 830 S.W.2d 891, 893-94 (Mo.App., W.D. 1992). To the contrary, such failure on the part of defendant to present the trial court with "a choice of some form of corrective relief short of a mistrial, dulls any inclination on the part of this court to label the trial court with an abuse of discretion for not declaring a mistrial." State v. Tygart, 531 S.W.2d 47, 50 (Mo. App., K.C.D. 1975). For this reason where, as here, defendant did not ask for an instruction, then we will consider the failure to grant a mistrial an abuse of discretion only if we find that the

> reference was so prejudicial "that its effect could not have been removed by direction to the jury." Thurlo, 830 S.W.2d at 894.

Smith, 934 S.W.2d at 321. In other words, the fourth factor is the issue in this case: whether a mistrial was proper. In addition, defendant's failure to request a lesser curative instruction than a mistrial cannot aid him. In sum, as much as this factor is considered in the analysis, this factor weighs in the State's favor.

4. The prejudice to petitioner was slight

The second, third, and fifth factors all look to the question of the nature of the statement: its brevity, repeated nature, and prejudice. As previously shown, the statement was brief, unrepeated, and not emphasized by the prosecution. The question therefore turns to the prejudicial nature of the comment.

Comparison with other cases involving expert witnesses in child sexual abuse cases show a great difference between the types of prolonged, highlighted testimony disfavored by this Court and the Court of Appeals, and the single, brief, non-responsive statement at issue in this case. The factual scenarios in State v. Taylor, 663 S.W.2d 235, 239 (Mo. banc 1984), and State v. Williams, 858 S.W.2d 796, 798-99 (Mo.App., E.D. 1993), two cases cited by petitioner, are vastly different from the facts in the case at bar.

In Williams, the Missouri Court of Appeals based its reversal on the facts and circumstances of the case, which consisted of the doctor's statements that sexually abused children rarely lie, that the incidents of lying are very low, the child's spontaneous response declares who the abuser was, and that the evidence in the case can only support the victim's story, and the fact that the State repeated and emphasized these statements in closing argument. Williams, 858 S.W.2d at 801. The doctor in Williams specifically stated that a sexually abused child does not lie when he or she spontaneously declares who the abuser was. Id. at 800.

In Taylor, the doctor called by the State as an expert witness testified at length that the victim suffered from rape trauma syndrome (RTS), that 95 percent of rape victims suffer RTS, that his process used for diagnosing RTS is 80 percent reliable, that the

victim displayed forty of the fifty recognized RTS symptoms, that the victim was not fantasizing the rape, and that she could not feign the symptoms. Taylor, 663 S.W.2d at 637. The doctor's ultimate conclusion, after a long series to questions and answers, was that the victim had in fact been raped as she testified. Id. at 241. This Court found that this testimony was inadmissible because "the state's purpose in using it was to buttress the victim's credibility," id. at 240, and the testimony was designed to "invest scientific cachet on the critical issue" at trial, id. at 241.

The case at bar is very different from Taylor and Williams. In Taylor, as shown above, the prosecutor embarked on a long series of questions to pointedly adduce facts about the credibility of the victim. In this case, however, the prosecutor merely asked, after discussing the victim's medical history, "[w]hat part of the victim's demeanor was significant?" (Tr. 265). In this case, the prosecutor was not asking for an opinion on credibility. The prosecutor asked what the significant behavioral characteristics of the victim were and received a non-responsive answer. This single unresponsive answer is greatly different than the detailed questioning in Taylor meant to elicit an opinion on credibility, and the detailed statement in Williams that went to great lengths to convince the jury that sexually abused children do not lie when spontaneously naming their abuser.

The prosecutor in the case at bar made no further mention of the comment during direct examination but took this line of questioning to a proper conclusion: Dr. Solomon testified that "the entire examination was consistent with sexual abuse" (Tr. 267). This conclusion is well within the confines of the law. Williams, 858 S.W.2d at 798-99. The prosecutor in the case at bar made no mention of the challenged comment in closing argument, which differentiates this case from Williams, a case in which the prosecutor "repeated and emphasized" the improper statements in closing argument.

These facts distinguish this case from Taylor and Williams. The prosecutors in those cases intended for the doctors to comment on credibility, asked the doctors to comment on credibility, and utilized the doctors' comments on credibility. The single comment in this case, however, was not called for nor emphasized by the prosecutor. Therefore, the result in those cases, reversal, is not mandated in this case because the isolated remark in this case does not rise to the level of prejudice in Taylor and Williams. The

prejudice from this remark is slight. In view of the fact that Dr. Solomon gave a legally correct conclusion that the victim's behavior and physical examination were consistent with sexual abuse, the prejudice from this remark becomes even more slight. Further, as the defense did not contest the fact that the victim's behavioral characteristics were consistent with sexual abuse, Dr. Solomon's statement contains even less prejudice.

In light of these facts, this statement did not have a decisive effect on the jury. The statement was brief, unrepeated, and not emphasized by the State. The statement, although improper, was not even close to the level of impropriety disapproved by this Court. The statement was part of a legally proper conclusion that the victims's behavior was consistent with sexual abuse. Therefore, this factor, even in the light most favorable to defendant, is evenly balanced between appellant and the State, or, at best for appellant, slightly tilted in his favor.

5. These factors, taken together, show that a mistrial was not warranted

Examination of these five factors show that the first, second, and fourth factors are solidly in the State's favor, and that the third and fifth factors are evenly split between appellant and the State. A balance of these factors thus lands in the State's favor. This case is an example of the principle that this Court announced in Johnston: "[u]nsolicited statements that are brief and limited in substance do not amount to reversible error in the absence of evidence that the prosecutor intentionally tried to inject unfair prejudice into the trial." State v. Johnston, 957 S.W.2d 734, 749 (Mo. banc 1997) cert. denied 522 U.S. 1150 (1998). The prejudice to appellant was slight. The statement was non-responsive and brief. Appellant did not request a motion to strike or disregard, or any other relief than a mistrial. The trial court thus did not abuse its discretion in denying his request for mistrial, an overbroad solution. Appellant's first point on appeal therefore must fail.

II.

The trial court did not abuse its discretion in finding that Dr. Hana Solomon was qualified as an expert witness in the field of child sexual abuse because Dr. Solomon's testimony helped the jury to understand the behavioral characteristics of child sexual assault victims, an area with which the jury was not familiar, in that Dr. Solomon had ten years experience as a sexual abuse forensic examiner and had performed at least one hundred sexual abuse forensic examinations on children during that time.

Appellant claims that the trial court erred in overruling trial counsel's objection to Dr. Solomon's testimony that Alexis' behavior was consistent with sexual abuse (App. Sub. Br. 27). Appellant contends that no foundation for this claim was laid in that Dr. Solomon lacked the mental health expertise to arrive at such a conclusion. Id.

This Court has stated that the determining the qualification of an expert witness is a matter left to the sound discretion of the trial court. State v. Mallett, 732 S.W.2d 527, 537 (Mo. banc), cert. denied 484 U.S. 933 (1987). The test for determining an expert's qualification is "whether he has knowledge from education or experience which will aid the trier of fact." Id. This Court has also stated that a "witness may be competent to testify as an expert though his knowledge touching the question at issue may have been gained by practical experience rather than by scientific study or research." State v. Rhone, 555 S.W.2d 839, 841 (Mo. banc 1977), quoting Herman v. American Car & Foundry Co., 245 S.W. 387, 389 (Mo.App. 1922). Further, this Court has stated that "[a]ny weakness in the factual underpinnings of the expert's opinion or in the expert's knowledge goes to the weight that testimony should be given and not its admissibility." Alcorn v. Union Pacific R.R. Co., 50 S.W.3d 226, 246 (Mo. banc 2001); St. Louis Southwestern R.R. Co. v. Federal Compress and Warehouse Co., 803 S.W.2d 40, 43 (Mo.App., E.D. 1990).

The trial court did not abuse its discretion in the case at hand because Dr. Solomon had extensive experience in the area of evaluating the behavior of sexually abused children. Dr. Solomon had been a sexual abuse forensic examiner (SAFE examiner) for over ten years and completed a yearly update to retain certification (Tr. 251-52). Dr. Solomon had performed between one hundred and two hundred forensic exams on children during that ten-year period (Tr. 252). The goal of the SAFE network is to prevent, evaluate, and treat child abuse (Tr. 252). Dr. Solomon conducted interviews with children before physical examinations in order to establish rapport and aid in medical diagnosis and treatment (Tr. 259). These facts qualified Dr. Solomon as an expert witness in the area of child sexual abuse because of Dr. Solomon's experience in the field of child sexual abuse. As such, Dr. Solomon was and should have been permitted to offer her expert opinion that Alexis Tolch exhibited behavioral characteristics consistent with sexual abuse.

Expert testimony is allowable when the expert has knowledge which will aid the trier of fact. Mallett, supra. Expert testimony concerning the behavioral characteristics of sexually abused children was necessary in this case because most members of society, thankfully, do not have a personal knowledge of child sexual abuse or its associated behaviors. This Court recognized this principle in State v. Silvey, 894 S.W.2d 662 (Mo. banc 1995). In Silvey, a clinical social worker testified as an expert that the child sex abuse victim "displayed behavioral indicators consistent with child sexual abuse." Id. at 670. This Court held that this conclusion by the expert witness was "clearly within the province of allowable expert testimony." Id. at 671. Most people have not experienced or worked with child sex abuse; thus, an expert helps the jury to understand the behavioral characteristics of such abuse. Dr. Solomon's testimony thus was proper expert testimony and the trial court did not abuse its discretion in admitting it.

Appellant contends that no foundation was laid because any testimony about behavioral changes in the victim would have been a psychiatric opinion and Dr. Solomon was not a psychiatrist (App. Sub. Br. at 31, 33). Appellant cites this Court's decision in Johnson v. State, 58 S.W.3d 496 (Mo. banc 2001) as support for this proposition. However, appellant's reading of Johnson is strained.

Johnson dealt with expert testimony of a mental abnormality diagnosis given by a prison counselor who had no training in psychology or psychiatry. Id. at 499. After a discussion of the statutory basis for diagnosis of mental conditions by only psychiatrists and psychologists, this Court held that the diagnosis of a mental condition was not in the counselor's area of expertise and that his testimony therefore should have been excluded. Id. In contrast, in the case at bar, Dr. Solomon did not testify to the diagnosis of any mental condition. It is these diagnoses that need a psychiatrist or psychologist. Id. Because Dr. Solomon's testimony did not involve any diagnoses of mental diseases or conditions, Dr. Solomon did not need to be a psychiatrist or psychologist. She merely needed to have experience or education in the area of sexually abused children and their behavior. Through her SAFE training and examinations, Dr. Solomon had that experience. Therefore, Dr. Solomon was properly qualified to testify as an expert in the area of child sexual abuse and the testimony aided the jury in understanding the behavioral characteristics of sexually abused children. Appellant's second point therefore fails.

CONCLUSION

For the foregoing reasons, respondent asks this Court to affirm appellant's conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06 and contains 4,992 words, excluding the cover and this certification, as determined by WordPerfect 9 software; and

2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses, using McAfee Anti-virus software, and is virus-free; and

3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed, postage prepaid, this ___ day of _____, 2002, to:

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